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Case 2:98-cv-05005-RHW Document 291

Filed 07/25/00

STOREY & MILLER
COURT REPORTERS
601 W. PAVANIDE
SUITE 1030
SPOKANE, WA 99201

On: Legal Messenger
Conrad Upchurch, William
Butt and David Mark

THE HONORABLE ROBERT H. WHALEY

Date: July 25, 2000
By: James R. Larsen

Douglas E. Smith (WSBA No. 17319)
Barbara J. Duffy (WSBA No. 18885)
LANE POWELL SPEARS LUBERSKY LLP
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101-2338
Telephone: (206) 223-7000
Facsimile: (206) 223-7107

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 25 2000

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

GABRIEL ALVAREZ, VIRGINIA)
ALVAREZ, MARIA CHAVEZ,)
RANULFO GUTIERREZ, PEDRO)
HERNANDEZ, MARIA MARTINEZ,)
RAMON MORENO, and ISMAEL)
RODRIGUEZ, individually and as class)
representatives,)

Plaintiffs,)

v.)

IBP, INC., a Delaware corporation,)
Defendant.)

CLASS ACTION
No. CT-98-5005-RHW

**LR 56.1 STATEMENT OF FACTS
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT DISMISSING
INDIVIDUAL CLAIMS OF
NAMED PLAINTIFFS GABRIEL
ALVAREZ AND VIRGINIA
ALVAREZ**

In support of Defendant's Motion for Summary Judgment Dismissing Individual Claims of Named Plaintiffs Gabriel Alvarez and Virginia Alvarez, defendant IBP, inc. ("IBP") submits the following statement of material facts:

LR 56.1 STATEMENT OF FACTS IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT DISMISSING ALVAREZ CLAIMS - 1

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LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WA 98101
(206) 223-7000

ORIGINAL

1 1. Named plaintiffs Gabriel Alvarez and Virginia Alvarez, husband and
2 wife, filed a voluntary petition for a joint Chapter 7 bankruptcy on June 8, 1998. See
3 “Voluntary Petition” filed in *In re Gabriel Alvarez and Virginia Alvarez*, Case
4 No. 98-03530-R2N, filed in the United States Bankruptcy Court for the Eastern
5 District of Washington (“Voluntary Petition”), attached as Exhibit A to the
6 accompanying Declaration of Douglas E. Smith in Support of Defendant’s Motion for
7 Summary Judgment Dismissing Individual Claims of Named Plaintiffs Gabriel
8 Alvarez and Virginia Alvarez (“Smith Decl.”); deposition of Virginia Alvarez, at
9 p. 202, attached as Exhibit H to Smith Decl.; deposition of Gabriel Alvarez, at p. 76,
10 attached as Exhibit G to Smith Decl.
11

12 2. As part of their Voluntary Petition, the Alvarezes filed a schedule of their
13 assets as required under 11 U.S.C. § 521(1). Id.
14

15 3. Nowhere in their schedule of assets do the Alvarezes list any claims
16 against IBP. Id.; see also deposition of Virginia Alvarez, at p. 202; deposition of
17 Gabriel Alvarez, at p. 77.
18

19 4. Both Gabriel Alvarez and Virginia Alvarez also filed a joint signed
20 declaration stating that their schedule of assets was true and correct to the best of their
21 knowledge, information and belief. Voluntary Petition, Exhibit A to Smith Decl.
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1 5. The Case Information sheet for *In re Alvarez* also identifies the
2 Voluntary Petition as a “No Assets” case. See Case Information Sheet for Case
3 2:98-03530, attached as Exhibit B to Smith Decl.
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5 6. On July 23, 1998, the bankruptcy trustee, Terry R. Nealey, filed a
6 “Trustee’s Report of No Distribution” stating that there was “no property available for
7 distribution from the estate over and above that exempted by law” and requesting that
8 the report be approved and that he be discharged from further duties as trustee. See
9 Trustee’s Report of No Distribution filed in *In re Alvarez*, attached as Exhibit C to
10 Smith Decl.
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13 7. The bankruptcy court granted the Alvarezes’ discharge under Chapter 7
14 of the Bankruptcy Code (11 U.S.C. § 727) and entered the Final Decree discharging
15 the bankruptcy trustee, Mr. Nealey, on September 29, 1998. See Discharge of Debtor
16 filed in *In re Alvarez*, attached as Exhibit D to Smith Decl; Final Decree filed in *In re*
17 *Alvarez*, attached as Exhibit E to Smith Decl.
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20 8. While the Voluntary Petition was pending before the bankruptcy court,
21 Gabriel Alvarez filed this action against IBP on or about June 29, 1998. See
22 Complaint for Minimum Wage Act and Fair Labor Standards Act Violations
23 (“Complaint”). Gabriel Alvarez was formally named as one of the original named
24 plaintiffs in the Complaint against IBP. Id.
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1 9. On August 10, 1998, while the Voluntary Petition was still pending
2 before the bankruptcy court, Virginia Alvarez opted into the present lawsuit against
3 IBP by filing her written consent to be a party plaintiff with the Court. See "consent
4 to be a party plaintiff" form for Virginia Alvarez filed with this Court on August 10,
5 1998, attached as Exhibit F to Smith Decl.
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8 10. Plaintiffs later amended their Complaint in this action to add Mrs.
9 Alvarez as one of the formal named plaintiffs listed in the caption of the Complaint.
10 See Second Amended Complaint for Minimum Wage Act Violations and Fair Labor
11 Standards Act Violations.
12

13 11. At his deposition in this case, plaintiff Gabriel Alvarez testified that he
14 has known and believed since a least sometime in the 1980s that IBP should have
15 been be paying him for the activities at issue in this lawsuit. See deposition of Gabriel
16 Alvarez, at pp. 7071, attached as Exhibit G. to Smith Decl. Mr. Alvarez further
17 testified that at the time he and his wife filed for bankruptcy in June of 1998, he knew
18 and believed that IBP owed him additional pay for the activities at issue in this
19 lawsuit. Id. at 77. Despite this knowledge, Mr. Alvarez admitted during his
20 deposition that he never told the bankruptcy court or the bankruptcy trustee about his
21 potential claims against IBP. Id.
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LANE POWELL SPEARS LUBERSKY LLP

By Douglas E. Smith
Douglas E. Smith, WSBA No. 17319
Barbara J. Duffy, WSBA No. 18885
Attorneys for IBP, inc.